Federal Court  Cour fédérale

Date: 20241004

Docket: IMM-16721-23

Citation: 2024 FC 1561

Ottawa, Ontario, October 4, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

THIERRY GAKUMBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of the Immigration Division [ID] finding that he is inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] For the reasons that follow, I am dismissing the application for judicial review.

Background

[3] The Applicant is a citizen of Rwanda. He took an oath to join the Rwandan Patriotic Front [RPF] when he was 15 years old and he remained involved with the RPF for about eight years. In the RPF, he occupied the role of class representative and, later, youth leader. The Applicant left the RPF in July 2013 when he was 23 years old. He claims that he did so because he learned that the RPF was possibly involved in his mother's death and the killing of his relatives.

[4] The Applicant fled to Canada in 2021 when he was 28 years old and, on November 30, 2021, made a claim for refugee protection on the basis that the RPF was threatening his life for leaving the organization. His refugee claim was suspended as a result of the Applicant's admission that he was a member of the RPF. The ID held an admissibility hearing and, on December 6, 2023, rendered its decision finding that the Applicant is inadmissible to Canada on security grounds pursuant to paragraphs 34(1)(f) and 34(1)(b.1) of the *IRPA*. The ID issued a deportation order against the Applicant.

Relevant Legislation

Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*]

> 34 (1) A permanent resident or a foreign national is inadmissible on security grounds for
>
> (b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;
>
> […]

> (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

Decision Under Review

[5] The ID determined that the RPF is an organization that has engaged in the subversion of democratic processes as they are understood in Canada, pursuant to paragraph 34(1)(b.1) of the *IRPA*. In particular, the RPF engaged in the subversion of Rwandan presidential and parliamentary elections and a referendum. As a result, the ID determined that the Applicant is described under paragraph 34(1)(f) of the *IRPA* for having been a member of the RPF.

[6] Regarding the Applicant's membership in the RPF, the ID found that the Applicant admitted to membership in his refugee claim between 2008 and 2013; subsequently, during an interview with Canada Border Services Agency, he admitted to being a member between 2005 and 2012 or 2013; and, he confirmed his memberships at the admissibility hearing. The ID rejected the Applicant's argument that the *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 requirements of complicity and for significant, knowing and voluntary contribution, in the context of cases relating to war crimes and crimes against humanity, are relevant to a determination of membership under paragraph 34(1)(f) of the *IRPA*. And, in any event, the ID determined that the Applicant's activities between 2008 and 2013 also constituted membership. Specifically, his role as a youth leader and his responsibility of reporting to a supervisor constituted membership with the RPF.

[7] Regarding the Applicant joining the RPF as a minor, the ID accepted that the Applicant took the oath to join the party at a young age. However, it found that he also engaged in activities as a youth leader as early as 2011, when he was well over the age of 18. As a result, there were reasonable grounds to believe that the Applicant, as an adult, was a member of the RPF. Even if he joined when he was 15 years old, his later participation with the RPF in his role as a neighbourhood youth leader was indicative of knowing and voluntary participating in the community as a member of the RPF. The ID agreed that age is a relevant factor to consider when an individual joins an organization as a minor, however, that age and requisite knowledge become less significant when there is clear evidence of participation within the organization as an adult.

[8] The ID also rejected the Applicant's argument that, because he was not a member of the RPF during the 2003, 2015, or 2017 electoral processes, that these could not be considered when assessing whether he is described as a member under paragraph 34(1)(f). The ID found that it is not a requirement for inadmissibility under that section that the dates of an individual's membership correspond with the dates on which the organization committed acts of terrorism or subversion by force (citing *Gebreach v Canada (Public Safety and Emergency Preparedness)*, 1010 FCA 274 at para 3).

[9] Regarding arguments of duress and necessity, the ID found that the jurisprudence supported that the defence of duress may be established where there is an explicit or implicit threat of present or future death or bodily harm, among other criteria. Concerning necessity, there must be an urgent situation of clear and imminent peril, among other factors. The

Applicant's evidence as to what negative consequences would arise if he refused to join the RPF was that he would not receive the benefits provided by the party, which included "free tuition, medical care, as well as opportunities job-wise" and that he would have to explain why he chose not to join the party. The ID found that this was more indicative of a loss of positive privileges than an urgent situation of clear and imminent peril. As such, the defences of duress and necessity were not met.

[10] The ID then determined the meaning of "subversion" as found in paragraph 34(1)(b.1) of the *IRPA*. After conducting a detailed review of the jurisprudence interpreting the term, the ID settled on its use in *Qu v Canada*, 2000 CanLII 17132 [*Qu*]. The Court in *Qu* determined that subversion "connotes accomplishing change by illicit means or for improper purposes related to an organization" (*Qu*, at para 49). The ID considered the country conditions evidence at length and ultimately found that there were reasonable grounds to believe that the RPF is an organization that engaged in the subversion of democratic processes in Rwanda. In particular, the RPF's actions resulted in the subversion of presidential and parliamentary elections and a constitutional referendum. The ID concluded that the RPF engaged in acts such as restricting who was able to run for office, including through the use of violence, and imposing undue influence over who citizens voted for, and that these acts accomplished significant change within the electoral process. Further, that the RPF committed these subversive acts against the electoral process in Rwanda for the improper purpose of maintaining their significant political power and their status as the governing party of the Rwandan national government through illegitimate and anti-democratic means. The ID rejected the Applicant's argument that the definition of subversion was not met because the impugned acts were done for the purpose of maintaining

status quo and not to overturn or cause change. Rather, it found that maintaining *status quo* and subverting democratic processes or institutions are not mutually exclusive.

[11] The ID found that the RPF's intention to subvert elections had not been plainly or expressly stated by the RPF in every instance. However, in one instance this did occur. Following the murder of an RPF opponent, President Kagame publicly stated that "[a]ny person still alive who may be plotting against Rwanda, whoever they are, will pay the price… Whoever it is, it is a matter of time." The ID found that this statement shows that violence was being used as a tool to silence opponents and signal a threat of harm to others who may seek to oppose the RPF. Further, that the RPF has also used other mechanisms of subversion such as barring candidates from registering and arresting candidates and opposition supporters. Given this, the ID found that the RPF had the intention to subvert the democratic process of free and fair elections, including through the use of violence and intimidation.

[12] The ID concluded that the RPF has engaged in actions that were intended to subvert, and were successful in subverting, the free and fair election of candidates for political office in Rwanda. The RPF used methods including violence and threats of violence to prevent candidates from running for office through free and fair elections. Those acts undermined the freedom of elections and prevented the RPF from losing power by limiting the number of candidates that Rwandan voters could choose between when casting their ballots. In doing so, the RPF accomplished change to the democratic process of elections by using illegitimate means to prevent candidates from running for office in elections and preventing citizens from freely

casting their ballots for the candidate of their choice. As a result, the ID found that the RPF engaged in subversion of democratic processes in Rwanda.

[13] Based on these findings, the ID found that the Applicant is a person described under paragraph 34(1)(f) of the *IRPA* for having been a member of the RPF, which is an organization that has intentionally engaged in subversion of a democratic process as they are understood in Canada under paragraph 34(1)(b.1) of the *IRPA*.

Issues and Standard of Review

[14] The sole issue arising in this matter is whether the ID's decision was reasonable.

[15] The parties submit and I agree that the applicable standard of review is reasonableness. Reasonableness review asks the reviewing court to "develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

The Parties Positions

Applicant's position

[16] The Applicant submits that the ID's finding of inadmissibility was unreasonable because it did not assess whether the RPF leadership had an intention or plan to commit subversive acts. The Applicant argues that, despite evidence demonstrating that political opponents of the RPF were targeted in Rwanda, no evidence existed to indicate that these events were orchestrated by RPF leadership. He asserts that none of the objective documentary evidence indicates that the RPF members committed any harm to political opponents, critics or journalists at the instance of RPF leadership. The Applicant submits that for a finding of inadmissibility, the ID was required to conclude that the RPF had an intention and a plan to accomplish change by illicit means or for improper purposes, yet it did not do so.

[17] The Applicant disputes the ID's finding that President Kagame's speech following the death of an RPF political opponent was evidence of a plain and express intention to commit subversive acts. He submits that President Kagame's statement was not a confirmation that RPF was responsible for the political opponent's murder, nor does it indicate that the murder was orchestrated by RPF leadership. Rather, the President's statement was a "warning addressed in general terms" and did not indicate that illicit means would be used by RPF leadership to achieve their goals.

[18] Alternatively, the Applicant submits that the ID failed to give any weight to the Applicant's age and failed to consider the circumstances under which he joined the RPF. The

Applicant submits that he joined the RPF when he was 15 years old and would have faced negative consequences if he did not take the oath. Further, that his age is critical in establishing the defence of duress. The Applicant cites *Zigta v Canada (Citizenship and Immigration)*, 2023 FC 93 [*Zigta*] as establishing, when assessing membership, that decision-makers must assess whether coercion or duress was involved, particularly in the circumstances of a minor (*Zigta*, at para 33). The Applicant submits that the ID did not consider this age in assessing duress and instead focused on the continuation of his membership in the RPF as an adult.

Respondent's position

[19] Citing *Nassereddine v Canada (MCI)*, 2014 FC 85 [*Nassereddine*], among other cases, the Respondent states that the test for inadmissibility is whether "there are reasonable grounds to believe" that the Applicant was a member of an organization for which there are "reasonable grounds to believe" engages, or has engaged, or will engage in acts of terrorism. That is, that the standard of proof in admissibility hearings is relatively low.

[20] The Respondent submits that the Applicant has admitted membership in the RPF and, therefore, no further analysis is required. And, once membership is admitted, it is membership for all purposes (citing *Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at paras 24–25; *Nassereddine* at paras 50–51).

[21] The Respondent also argues that an individual's status as a minor is not a blanket exemption from inadmissibility under paragraph 34(1)(f) of the *IRPA* (citing *Ismail v Canada (Citizenship and Immigration*), 2016 FC 1294). The Respondent relies on *Poshteh v Canada*

(Minister for Citizenship and Immigration), 2005 FCA 85 [*Poshteh*] for its discussion on whether an individual could be deemed inadmissible if they had been a member of the organization as a child and finding that the presumption of capacity increases with the age of a minor. Here, the Applicant proffered no evidence to establish that he was unaware of what the RPF was or that he had any misunderstanding of the organization's goals when he joined as a youth. Moreover, the Respondent emphasizes the ID's finding that the Applicant remained a member of the RPF for several years after he turned 18 and did not make efforts to leave Rwanda.

[22] On the issue of duress and necessity, the Respondent acknowledges that these may be particularly important factors for the ID to consider in the circumstances of a minor. The Respondent cites *Jalloh v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 317 [*Jalloh*], as providing a comprehensive summary of the relationship between membership, coercion and duress. Among other passages, the Respondent emphasizes paragraph 38 of *Jalloh*, which states that "the finding of membership should rest on indicia that the person's intentions were consonant with the group's objects, not survival." Here, while the Applicant asserts that he was under duress or forced to take the oath of membership when he was 15 years old, his evidence of negative consequences do not indicate that he joined the RPF for his survival or to avoid risk of life. Further, as noted by the ID, his active membership continued until he was 23. The Respondent submits that the Applicant failed to establish duress in joining the RPF. Further, nor was there any evidence of any negative repercussions, being risk to the Applicant's life, explicit or implicit threats of present or future death or bodily harm, or urgent and imminent peril

after he left the RPF in July 2013. Indeed, he worked in a government job from ages 28 to 33 while the RPF was the governing party.

[23] The Respondent contests the Applicant's claim that the evidence before the ID did not demonstrate whether the subversive acts were sanctioned or instructed by RPF leadership. The Respondent submits that the ID addressed this issue on the evidence before it. Namely, the ID determined that the RPF engaged in acts that subverted the freedom and fairness of elections in Rwanda, changing the electoral process by restricting who was able to run for office, including through the use of violence among other acts.

[24] The Respondent cites *Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480 to submit that involvement in a subversive organization's youth branch nonetheless demonstrates that they are a part of that subversive organization. Additionally, the Respondent rejects the Applicant's submission that the RPF was not trying to subvert but to instead maintain *status quo*. It points out that the ID concluded that the RPF's actions were for the improper purpose of maintaining their significant political power and achieved this purpose through illegitimate and anti-democratic means.

Analysis

[25] The standard of proof in an admissibility determination under subsection 34(1) of the *IRPA* is reflected in section 33, which states:

> The facts that constitute inadmissibility under section 34 […] include facts arising from omissions and, unless otherwise

> provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[26] Further, this Court and the Federal Court of Appeal have found that the test for inadmissibility is whether "there are reasonable grounds to believe" that the foreign national was a member of an organization for which there are "reasonable grounds to believe" engages, or has engaged, or will engage in the circumstances outlined in section 34(1) of the *IRPA* and that this is "[a]relatively low evidentiary threshold" (*Ugbazghi v Canada (MCI)*, 2008 FC 694 at para 47; *Anteer v Canada (Citizenship and Immigration)*, 2016 FC 232 at para 48; *Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163 at para 40).

i. Treatment of the Applicant's age and the defence of duress and necessity

[27] There is no merit to the Applicant's argument that the ID failed to give any weight to the Applicant's age when he joined the RPF and failed to mention the circumstances in which he became a RPF member, or the consequences he would face if he had refused to join.

[28] The ID recognized that the defence of duress will be established where there exists an explicit or implicit threat of present or future death or bodily harm, citing *R v Ryan*, 2013 SCC 3 [*Ryan*]. I note that *Ryan* set out the elements of duress, which also include that there must be a "non-existence of a safe avenue of escape", among other factors (*Ryan*, at para 55). The ID also recognized that, in making out a defence of necessity, there must be an urgent situation of clear and imminent peril among other factors, citing *Tesfazgi v Canada (Citizenship and Immigration)*, 2022 FC 1356 at para 45].

[29] In their written submissions to this Court, both parties refer to *Jalloh*, where this Court held that "the finding of membership should rest on indicia that the person's intentions were consonant with the group's objects, not survival" (at para 38).

[30] Here the record does not establish that the Applicant was motivated by survival or self-preservation when he joined the RPF. In fact, the ID reproduced the transcript of the Applicant's testimony in its reasons, which do not support this. When asked at the hearing if there would be negative consequences if he refused to join or take an oath when the RPF asked him to do so, the Applicant's testimony was that he would "not [get] the benefits that we were told to – that we would receive when we are part of the party which included education…free tuition, medical care, as well as opportunities job-wise." Asked if there was anything else, the Applicant testified that he would have to "explain why you do not want to be part of the party that is running the country. You would have to explain why you selected yourself out of it." As the ID reasonably found, these consequences reflected a loss or positive privilege, and not an urgent situation or imminent peril. Accordingly, the defence of necessity was not made out.

[31] The Applicant's testimony also does not reflect an explicit or implicit threat of present or future death or bodily harm at the time when he joined the RPF, as required for the defence of duress. Moreover, as the Respondent points out, after the Applicant left the RPF in July 2013, he worked in a government position, while the RPF was governing party, until he left Rwanda in 2018.

[32] The Applicant's reliance on *Zigta* also does not assist him. In *Zigta*, the applicant claimed that when he was 17 years old, multiple armed soldiers came to his home at night and demanded that he come with them, that he had no option to refuse their demand and that therefore joined the Eritrean People Liberation Front. In overturning that applicant's inadmissibility determination, Justice Ahmed found that the officer's conclusion that several armed soldiers demanding that a 17 year old join the EPLF was merely an "indirect threat", particularly in light of the applicant's belief that there was no option to refuse and that had nowhere to go if he left, was unreasonable (at para 35).

[33] There are no similar circumstances in this case. Rather, the Applicant's testimony was that he was approached by the RPF during school hours with his classmates and, as indicted above, there was no direct or implicit threat should he refuse to join.

[34] And while the Applicant suggests that the ID, in other cases, has found other individuals to have been persuaded by duress to join the RPF, these examples do not speak to the Applicant's own experience. There is no evidence to support his counsel's submission that the Applicant was dragged into politics by force and not by his own will.

[35] Further, in *Poshteh*, the Federal Court of Appeal held that recognition of an individual's status as a minor does not in all cases require a blanket exemption from application of a law to the minor. That is particularly the case where the status of a minor is recognized by the common law but not by statute. In the case of common law recognition, capacity is often viewed on a continuum on which the presumption of capacity increases with the age of the minor (para 43).

The Federal Court of Appeal held that although paragraph 34(1)(f) does not provide for a blanket age exemption, an individual's status as a minor is a further consideration in the individual assessment required under that provision, and:

> [51] For purposes of determining membership in a terrorist organization by a minor, the requisite knowledge or mental capacity should be viewed on a continuum. Just as there would be a presumption against the requisite knowledge or mental capacity in the case of young children, there would be a presumption that the closer the minor is to 18 years of age, the greater will be the likelihood that the minor possesses the requisite knowledge or mental capacity.

[36] Accordingly, it was reasonable for the ID to consider the Applicant's age and capacity as a continuum. The ID found that the Applicant, at 15 years of age, had at least some awareness of the RPF and its goals. Indeed, the Applicant testified that when the RPF visited his school, they would explain, "the mission and the plans it has for Rwandans who are going to join it" and he understood that, as a member of the RPF, he was helping them as a party.

[37] But, more importantly, the ID also found that age and requisite knowledge becomes less significant when there is clear evidence of participation within the organization as an adult. The evidence was that the Applicant remained a member of the RPF, serving as a youth leader from when he was over 18 years old until he was 23 years old. The ID found that his continued participation as an adult was sufficient to find that he was a member of the RPF. That is, even if he joined at age 15, his activities as a party member in adulthood were sufficient to establish membership under paragraph 34(1)(f).

[38] In conclusion on this point, the ID's treatment of the Applicant's age when he joined the RPF was reasonable as was its conclusion, having considered the Applicant's age and his testimony, that the defences of duress and necessity were not made out.

ii. Whether the RPF leadership was responsible for the subversive acts

[39] The Applicant argues that the evidence before the ID did not establish that RPF members committed acts of subversion and, while there were human right violations and abuse, it was not established that those who committed those acts were instructed by the leadership or the RPF or if the acts were committed for the benefit of "Rwandan officials who want to remain in power".

[40] I am not at all sure that it matters whether RPF "leadership" instructed the subversive acts – the question is whether the RPF as an organization committed acts of subversion.

[41] The ID noted that in *Qu*, the definition of subversion was connoting accomplishing change by illicit means or for improper purposes "related to an organization" (*Qu*, at para 49). Nor does the Applicant point to any evidence that was before the ID that would establish that it was Rwandan officials as a discreet entity – and not the RPF – who have undertaken the subversive acts attributed to the RPF by the ID. The Applicant also submits that there was a "confusion" between the RPF, the Rwandan security forces or any Rwandan criminals in the objective evidence – but cites no examples of that confusion in such articles or how this confusion factored into the ID's findings.

[42] The ID found that the documentary evidence established that the electoral process in Rwanda, including elections and the freedom of candidates to register and contest those elections, has been marred with numerous instances of violence used to prevent and discourage citizens from running for office, publicizing dissenting opinions, or otherwise opposing the RPF and their governance of Rwanda. It stated:

> [m]ost importantly, that the evidence suggested an established pattern of voter and opposition suppression dating back to 2003, and which has continued through at least the 2017 election, through intentional actions such as the use of violence against political opponents and opposition candidates, as well as instructing electors who to vote for inside the voting location (at para 123).

[43] From this, the ID concluded that the RPF had the requisite intention to subvert the democratic processes of elections through its actions, including through the use of violence.

[44] From paragraphs 99 to 114 of its reasons, the ID summarized the objective documentary evidence of subversion of a democratic process. This began with:

> [102] A Human Rights Watch briefing paper from 2003 notes that the RPF have used strategies that include "threats, including public threats by the president himself, arbitrary arrests, violence, and intimidation of nongovernmental organizations and the press" since 2000 to suppress political opposition groups. [Exhibit M-2, page 80-81]. In 2001, a member of an opposition party (Ubuyanja) was murdered and several other members and supporters were arrested. [Exhibit M-2, page 80-81]. Shortly thereafter, President Kagame "made a highly publicized speech at the ceremony for commemorating the genocide warning Bizimungu (referring to Pasteur Bizimungu, who co-founded an opposing political party, PDR-Ubuyanja, along with Charles Ntakirutinka) and other dissidents that no one would be able to protect them if authorities lost patience with them. Soon after Bizimungu and Ntakirutinka were arrested and charged with endangering state security, fostering ethnic divisions, and engaging in illegal political activities. Some twenty others were also arrested in the following

> weeks, all charged with supporting Ubuyanja." [Exhibit M-2, page 81].

[45] The ID continued, for the next 14 paragraphs, to summarize the country conditions evidence describing attacks, imprisonment, disappearances, torture, and other forms of repression of voters and opposition parties.

[46] In that regard, I note that the ID referred to a 2003 Human Rights Watch article which speaks to a continuing trend of repression and states "As the RPF has moved to appropriate an increasingly large number of official posts, to increase its membership, and to limit the autonomy of other parties, it has also suppressed efforts to create new political groups". The article goes on to describe these actions. An August 2, 2010 Human Rights Watch Article entitled "Rwanda: Silencing Dissent Ahead of Elections" states that Rwanda's presidential elections were to take place on August 9, 2010, in a context marked by increasing political repression and a crackdown on free speech: "Over the prior last six months, Human Rights Watch documented a worrying pattern of intimidation, harassment and other abuses - ranging from killings and arrests to restrictive administrative measures against opposition parties, journalists, members of civil society and other critics". None of the three parties that had openly criticized RPF policies had been allowed to partake in the elections. "The Democratic Green Party and the FDU-Inkingi have been prevented from registering; the leader of the PS-Imberakuri is in prison. Their members have been harassed and threatened". The article went on to chronical these events.

[47] Human Rights Watch published a similar article, "Rwanda: Politically Closed Elections" concerning the 2017 election. A 2017 report from Freedom House states: "The Rwandan

Patriotic Front (RPF), led by President Paul Kagame, has ruled the country since 1994, when it ousted forces responsible for that year's genocide and ended a civil war. While the regime has maintained peace and economic growth, it has also suppressed political dissent though pervasive surveillance, intimidation, and suspected assassinations. Recent constitutional changes could allow Kagame to serve another three terms as president."

[48] An article entitled "Suspects in murder of Rwandan dissident Patrick Karegeya are 'directly linked' to Paul Kagame's government, police say" reported that the RPF was directly connected to the murder of a political opposition leader.

[49] Thus, to the extent that the Applicant is suggesting that the objective documentary evidence does not indicate that the RPF members and/or its leadership were responsible for acts of subversion – I do not agree. These articles directly or if not, implicitly, attribute these acts to the RPF and its leader. And, even if "officials" may have committed some of these acts, they are the officials and members of the RPF government, as are any "security forces."

iii. Whether RPF leadership had an express intent to commit subversive acts

[50] The Applicant argues that the ID misinterpreted the evidence about President Kagame's speech.

[51] The ID pointed out that the President's speech was an example of the RPF expressly conveying its intention to subvert the democratic process of elections through its actions, including violence. The President's speech occurred after the murder of an RPF political

opponent. Following the murder, the President, who is the leader of the RPF, publicly stated that: "[a]ny person still alive who may be plotting against Rwanda, whoever they are, will pay the price… Whoever it is, it is a matter of time".

[52] I agree with the Applicant that the President's statement does not explicitly confirm that the RPF was responsible for the murder of the political opponent, or that the murder was orchestrated by the RPF. However, to use the Applicant's own characterization, President Kagame's statement acted as a "warning" – and that warning came from the leader of the RPF. This characterization aligns with the ID's finding that President Kagame's words "signal[led] a threat of harm to others who may seek to oppose the RPF." Moreover, in the days following the murder, the Defence Minister was reported as saying "[w]hen you choose to be a dog, you die like a dog."

[53] The ID reasonably interpreted the President's speech as a political leader warning the public against holding different political views and threatening harm to those who do. As such, the ID reasonably concluded that this was an act of subversion against a democratic government, institution or process as per the language of paragraph 34(1)(b.1).

[54] Further, the ID's finding that the President's statement established that violence was being used as a tool by the RPF to silence opponents is reasonable when viewed in light of the record. The extensive documentary evidence demonstrates a clear and consistent pattern of murders, disappearances and imprisonments of RPF's political opponents and critics.

[55] I also note that a Human Rights Watch Briefing Paper entitled “Preparing for Elections: Tightening Control in the Name of Unity”, contained in the record but not referenced by the ID, contains another example of the RPF’s express intent to engage in acts that subvert democratic processes. It states that the RPF labelled possible political opponents as “divisionist” and explained that “President Paul Kagame warned that he would ‘wound’ ‘divisionists’ who threatened to undermine national unity.”

[56] In my view, it was reasonable for the ID to find that President Kagame’s speech demonstrated an express intent to carry out violence on those whose opinions differed from that of the RPF and, as such, demonstrated an express intent to subvert the democratic process of elections.

[57] That said, it is not apparent to me that express intent to subvert is necessary. It can be expected that organizations like the RPF would, in most cases, be somewhat circumspect in how they publically express their intention to subvert the democratic process and to retain power. However, in circumstances such as this, where the documentary evidence is rife with examples of acts of subversion attributed to the subject organization, if intent must be established, then it can be inferred and need not be express.

[58] In my view, the ID reasonably found that, based on the documentary evidence, there were reasonable grounds to believe the RPF is an organization that has engaged in the subversion of democratic processes in Rwanda.

Conclusion

[59] For the above reasons, I find that the ID did not err in finding that the Applicant is a member of the RPF, pursuant to paragraph 34(1)(f) of the *IRPA*, and that the RPF is an organization that has engaged in subversion of a democratic process as they are understood in Canada, pursuant to paragraph 34(1)(b.1) of the *IRPA*. And, therefore, that the Applicant is inadmissible on security grounds.

JUDGMENT IN IMM-16721-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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